S.B. CIVIL FIRST APPEAL NO. 195/1997

Date : 03.05.2006

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. Gopal Raj Singhvi for the appellant.
Mr. M.C.Bhoot for the respondent.

== = =

Heard.

This first appeal arises out of a decision of the Court of Additional District and Sessions Judge No.3, Jodhpur in Civil Original Suit No. 6/94(48/84).

The suit was filed for partition of the properties in between the family members. The suit was filed on the premises that there was a common ancestor Mahadeo Chand. He had three sons ; Jugraj chand, Dilsukh Chand and Mahipal Chand. Jugraj Chand had contracted two marriages. Out of first marriage was born appellant Narendra Bhandari and out of second marriage was born Vinod Bhandari. The suit was filed by second wife of Jugraj Chand but sons being alive, she was not considered entitled to file suit for the purpose, therefore, Vinod Bhandari was impleaded as plaintiff and the suit proceeded.

The suit was contested by the appellant Narendra Bhandari. The suit relates to a piece of land apart from other properties. Now the dispute circles around the piece of land situated in Sardarpura property only. The property was in possession of Late Shri Mahadeo Chand. In the erstwhile State of Mewar, the pattas were issued on the basis of possession. While the patta

for the disputed land was issued, alongwith three brothers Mahipal Chand, Jugraj Chand, Dilsukh Chand, son of Jugraj Chand from his first wife, Narendra Bhandari was also included. This inclusion of name of Narendra Bhandari in the patta is the basic cause of action on which the appeal is based.

According to the learned counsel for the appellant, the name of Narendra Bhandari having been included in the patta, he had acquired a right because his name was included for the love and affection which the grandfather Mahadeo Chand had for the appellant because by that time, he had lost his mother. Since he had lost his mother, it was considered that his name be included. On the basis of such inclusion, the appellant claimed that he has one fourth share in the property of Mahadeo Chand and thus, the share determined by the trial court is erroneous and deserves to be corrected in the light of the arguments raised by the learned counsel for the appellant.

Learned counsel for the appellant further urged that on the disputed piece of land, a building is there which was renovated by him. The trial court has not given any amount for the expenses incurred by the appellant and since the money spent by the appellant has not been accounted for by the trial court, he is entitled to received the money which he has spent on the property. According to the learned counsel for the appellant, the trial court has wrongly decided Issue No.1 which speaks of non-division of the property. In fact, the property was apportioned when the name of the appellant was included in the patta and that apportionment amounted to division of the property. Issue

no.2 was not pressed. Issue no.3 related to alternation in property and Issue No.4 related to the partition. Issue no.5 related to expenses.

Learned counsel for the respondent per contra urged that inclusion of name in the patta by itself does not entitle the appellant to claim any share independent of what a coparcener in HUF property gets. The inclusion of name was only by way of identifying the progeny of the family and it was not in the way of love and affection. The application filed by Shri Mahadeo Chand for getting the patta issued is on record which speaks nothing about such bequething or alienation or partition or assignment to Narendra Bhandari, appellant in the manner and way it is claimed. This document could be referred to establish as to what was the intention and purpose of inclusion of name of Narendra Bhandari in the patta. That having not been established by the appellant, it cannot be claimed by mere argument that Narendra Bhandari was assigned or given any share in the property to the exclusion of other share holders in the coparcener property. In this manner, learned counsel stated that the appeal is based on a mis-conceived thought of the rights having accrued to the appellant. In fact, in Marwar, it was a practise that when pattas were made, names of progeny were also included and that practise was not only similar to the patta issued, to the appellant, it was a general practise and this court has taken note of it in the matter of Jetha Ram Vs. Hazarimal reported in RLW 1951 Page 377 wherein, it has been held as under :-

> "8. It was contended that the "patta" of the property was in the name of Jetharam and his sons. It may be pointed out that the defence in the trial court was that the plot had been purchased and

> uilt upon by Dalla; father of Jetharam, but that fact was held not proved. The *patta* itself was not produced by the defendants. It was argued that the plaintiff in his statement admitted having seen the patta and did not deny Laduram's name being in it. What the plaintiff stated was that he had seen the patta but did nto remeber in whose name it was. The *patta* was in possession of the defendants themselves and they could have very easily produced it if they wanted to rely upon it. It is however, conceded that the *patta* of this property was obtained in s. 1969 when Laduram, th eeldest son of Jetharam, was not mreo than 12 years old. The mere fact that Jetharam thought it property to add his mnor son's name does not prove that the property was acquired jointly by Jetharam and his son. Some proof should have been adduced as to the source from which the money was forthcoming not only for the purchase of the land but for the construction of the property thereafter. There is no evidence on record in this respect. The doctrine of advancement isn ot followed in India and the fact that a minor's name is included in the document of title does not confer any title in him unless of course it is proved that the minor had any independent source of income and the minor's money was utilized in the acquisition of the property."

In that view of the matter, learned counsel for the respondent urged that this court having taken view that mere inclusion of the name of patta does not confer any right, the equities are decisively in favour of the respondent plaintiff, therefore, the argument of the learned counsel for the appellant deseves to be discarded on this count alone.

Learned counsel for the appellant has also urged that the process of issuing pattas was a quasi judicial proceeding and therefore, those quasi

judicial proceedings had the effect of conferring rights on the appellant. This argument deserves to be rejected on the face of it because this Court has taken a view that this was only a practice of incorporation of names. Since, the names were incorporated as practice, this cannot have the effect of conferring any right and thus, this argument of the learned counsel is being taken care of by the judgment rendered in the matter of Jetharam (Supra).

Once, when the question of share of the parties is concluded in the shape that the appellant only has a right in the share of his father and share devolves on him out of the share of his father Mahadeo Chand. Mahadeo Chand had three sons and each son had one third share in father's property. Since there was no Will and the patta as claimed does not have the effect of conferring any right on the appellant for one fourth share. Therefore, in view of the fact that Jugrajchand had one third share alongwith his brothers in the property, the appellant will have his share out of one-third share of Jugrajchand. Since Jugrajchand is succeeded by three heirs i.e. two plaintiffs and one appellant, therefore, each one of them will get one third share of one-third share which Jugrajchand had acquired in the property of Shri Mahadeo Chand. Thus, the share of the appellant comes to be one ninth of the property of Mahadeo Chand. As regards the apportionment of shares, the suit has rightly been decreed by the trial court and no interference is called for.

As regard the expenses incurred by the appellant on the property, the incurring of expenses was done by him while the property continued and is

continuing to be a joint property. It will be required to be divided. A coparcenar spending money in a coparcenary proeprty and also enjoying the fruits of the property cannot be considered to be entitled to any such allowance for what he spent on the property becuase he also enjoys the fruits of the proeprty in the process and therefore, whatever he spent, he spent for his own comfort and pleasure which he has driven out of the property. So far as the second arguement of the learned counsel for the appellant that he is entitled to the expenses which he has incurred on the property apart from the share which he had claimed draws no merit. The trial court has found that the appellant has not succeeded in proving this fact. That is also an additional ground for rejection.

In view of the aforesaid discussion, the appeal is held to be merit-less and the same is hereby dismissed. The preliminary decree as granted by the trial court is affirmed and the matter is now remanded to the trial court for being proceeded to draw the final decree.

(BHAGWATI PRASAD), J.

bjsh